

Enhanced Use Leasing

What is Enhanced Use Leasing?

The phrase “enhanced use leasing” refers to the enhanced leasing authority contained in the 2001 National Defense Authorization Act. This Act modified existing leasing authority (10 U.S.C. §2667) to authorize Department of Defense components to lease underutilized land and facilities to the private sector and retain the consideration received for the lease. Under this enhanced authority, the Secretary of the Army may now enter into a long term lease of Army property that is underutilized (but not excess to the Service’s needs), and receive in return not less than the fair market value of the property in the form of cash or in-kind consideration. In-kind consideration may include alteration, repair, improvement, restoration (including environmental restoration) and new construction or provision of facilities at any installation under the control of the Secretary.

The following caveats apply to the use of 10 U.S.C. §2667:

1. If the out-lease is for longer than five years, the Secretary must determine that the longer period promotes the national defense or public interest.
2. The lease must provide that the Secretary can revoke the lease at any time unless the Secretary determines that omitting such a provision will promote the national defense or public interest.
3. Cash proceeds received for the out-lease must be deposited in a special Treasury account and may be used by the Service only after subsequent appropriation by Congress.
4. If the consideration to be received under the out-lease (including “in-kind” consideration) is for a value greater than \$500,000, the Secretary may not enter into the lease until 30 days after submitting a report on the intended lease to the Congressional defense committees.

How Will the Army Use its Enhanced Use Leasing Authority?

The Army has accumulated an incredibly large inventory of historic properties and historic districts. Currently, the Army possesses approximately 14,000 properties that are listed or eligible for listing on the National Register of Historic Places. Over the next thirty years, another 50,000 Army buildings will be potentially eligible for listing. Federal law imposes specific obligations on the Army, as well as on all other federal agencies regarding the care and preservation of historic properties under the agency’s control. These obligations often involve considerable expense to the agency. At the same time, the President has recently issued an Executive Order (Executive Order 13287: **Preserve** America), that requires federal agencies to seek partnerships to promote economic development using historic properties.

In response to these current and future obligations, the Army has begun to engage the private sector in the effort to care for and preserve the Army's historic properties. The means for accomplishing this effort is the ability to use the Enhanced Use Leasing authority to out-lease or otherwise make available the Army's historic properties to private entrepreneurs in return for rental payments, as well as the preservation and maintenance of the historic properties themselves.